

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CH1777
)	EEOC NO.: N/A
HOPE FAIR HOUSING CENTER,)	HUD NO.: 050902928
)	ALS NO.: 09-0255
Complainant.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Rozanne Ronen presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2009CH1777, Hope Fair Housing Center, Complainant, and Mark Allen Realty, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request, and the Department's response to the Complainant's Request, and the Complainant's Reply to the Department's Response; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On December 8, 2008, the Complainant filed an unperfected charge of discrimination with the Department, and perfected the charge on December 16, 2008. The Complainant alleged that the Respondent expressed an unlawful preference or limitation based upon familial status in six rental advertisements that it or its agent posted to Craigslist, in violation of § 3-102(f) of the Illinois Human Rights Act ("Act"). On April 30, 2009, the Department dismissed the Complainant's charge for lack of substantial evidence. On May 19, 2009, the Complainant filed a timely Request.
2. The Complainant is a not-for-profit corporation that works to identify and eliminate barriers to equal and fair housing in the Chicago Metropolitan area. During 2008, the Complainant

conducted an investigation into the presence of facially discriminatory advertisements on Craigslist¹ by local realtors and others.

3. The Department's investigation revealed that the Respondent is a real estate company that represents buyers and sellers of real estate. The Respondent is not generally involved in the rental of property. However, from April 16, 2008 through July 23, 2008, one of its employees placed six rental advertisements on Craigslist for four separate properties. Three of the advertisements concerned the rental of a three-bedroom apartment located at 847 North Marshfield in Chicago, Illinois. One of the advertisements concerned the rental of a three-bedroom apartment located 746 North Armor in Chicago, Illinois. One of the advertisements was for a two-bedroom apartment located at 2144 Shakespeare in Chicago, Illinois. The final advertisement was for a three-bedroom apartment located at 2102 Bingham in Chicago, Illinois. The apartments herein referenced will be collectively referred to as "the Premises."
4. The advertisements for the Premises contained the following language either within the heading of the advertisements or within the body of the advertisement as part of the overall description of the Premises: "Great for couples," "Perfect for roommates of couples," "Great for a single ton [sic] or couples," and "Good for couples."
5. The Complainant alleges that these advertisements expressed an unlawful preference for families without children, in violation of Section 3-102(f) of the Act. The Complainant further argues in its Request that the Department erred when it determined that the Complainant had to prove as part of its *prima facie* case that the Respondent intended to discriminate when it posted the advertisements.
6. Section 3-102(f) of the Act provides in pertinent part:

It is a civil rights violation for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman, because of unlawful discrimination or familial status, to:

.....

Publication of Intent. Print, circulate, post, mail, publish or cause to be so published a written or oral statement, advertisement or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which expresses any limitation founded upon, or indicates, directly or indirectly, an intent to engage in unlawful discrimination;

775 ILCS 5/3-102(f) (West 2009).

¹ Craigslist is an internet website which provides an electronic meeting place for those who want to buy, sell, or lease housing and other goods and services. See Chicago Lawyers' Committee v. Craigslist, Inc., 519 F.3d 666 (7th Cir. 2008).

7. The Commission agrees with the Department that intent is an element of a charge filed pursuant to Section 3-102(f) of the Act because the plain language of Section 3-102(f) clearly states that the “publication” in question must either be **(a)** founded upon an intent to engage in unlawful discrimination, or **(b)** must indicate, directly or indirectly, an intent to engage in unlawful discrimination. Therefore, the Commission must determine if there is substantial evidence in the file that the Respondent intended to engage in unlawful discrimination when it published the advertisements.
8. There is no Illinois caselaw directly applicable to the issue at hand. The Complainant and the Department both point out that the language of Section 3-102(f) of the Act closely parallels the language of Section 3604(c) of the Fair Housing Act (“FHA”) :

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful...[t]o make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

42 U.S.C.A. 3604(c) (West 2009)

9. Since the language of the two statutes do closely parallel each other, the Commission may look to federal law for some guidance in interpreting the Act. See Szkoda v. Illinois Human Rights Commission, et al., 302 Ill.App.3d 532, 706 N.E.2d 962 (1st Dist. 1988). However, the Commission need not apply in “lockstep” fashion federal court interpretations of § 3604 of the FHA to § 3-102(f) of the Act. See Trayling v. Board of Fire and Police Com'rs of Village, 273 Ill.App.3d 1, 11, 652 N.E.2d 386, 393 (2nd Dist. 1995).
10. Both the Complainant and the Department argue that the Commission should consider and apply the “ordinary reader” standard, which was developed by the federal courts to interpret Section 3604(c) of the FHA.
11. Under the “ordinary reader” standard, if an advertisement clearly discriminates against a member of a protected class, then inquiry into intent is “largely unnecessary,” and the court may determine from the face of the ad whether or not the ad “indicates” an unlawful preference to the ordinary reader. See Soules v. U.S. Department of Housing and Urban Development, 967 F.2d 817, 824 (2d Cir. 1992); see also Ragin v. New York Times Company, 923 F.2d 995, 999 (2d Cir. 1991); see also Ohio Civil Rights Commission v. Harlett, 132 Ohio App.3d 341, 724 N.E.2d 1242 (Ohio App. Ct. 1999), and Metropolitan Milwaukee Fair Housing Council v. Labor and Industry Review Commission, 173 Wis.2d 199, 496 N.W.2d 159 (Wis. App. Ct. 1992).
12. On the other hand, advertisements that are not clearly discriminatory may violate Section 3604(c) if they subtly or tacitly send a discriminatory message. Ragin, 923 F.2d at 999. These more subtle advertisements violate Section 3604(c) when it is apparent from the context of usage that discrimination is likely to result. See Ohio Civil Rights Commission, 123 Ohio App.3d at 345. In considering the context of an alleged discriminatory

advertisement, courts must consider the intent of the advertisement's author. Ragin, 923 F.2d at 1000; and Ohio Civil Rights Commission, 132 Ohio App.3d at 346.

13. In its Request and its Reply, the Complainant argues that the advertisements on their faces violate Section 3-102(f) of the Act because the phrases used within the advertisements would "unquestionably" express to the ordinary reader that families with children need not apply.
14. In its Response, the Department argues that the advertisements were not facially discriminatory because the advertisements did not explicitly exclude children from rental or occupancy of the Premises. The Department argues that because the advertisements were not facially discriminatory, extrinsic evidence was necessary to determine whether or not the Respondent intended for the advertisements to subtly or tacitly discriminate against renters with children.
15. The Commission finds that the Department's approach is correct. First, as stated earlier in this Order, the plain language of Section 3-102(f) of the Act clearly requires proof of *intent* to engage in unlawful discrimination before liability can attach. Second, the Department's approach is also consistent with the federal courts' approach. For example, in Jancik v. U.S. Department of Housing and Urban Development, 44 F.3d 553 (7th Cir. 1995), the advertiser included the language "...mature person preferred," in his advertisement. The Jancik court stated that the use of the term "mature person" in the ad was "problematic" because it "suggest[ed] an unlawful preference to an ordinary reader," however the use of the term was not a *per se* violation of the FHA. Jancik, 44 F.3d at 556. Therefore, extrinsic evidence was needed in order to verify that the use of the term "mature person" in the ad... "was meant to convey an unlawful preference." Id. at 557.
16. Similarly, the phrases, "Great for couples," "Perfect for roommates of couples," "Great for a single ton [sic] or couples," and "Good for couples," are not facially discriminatory because they do not on their faces communicate an unlawful preference to the ordinary reader. The Commission does not find that the use of these phrases would obviously communicate to the "ordinary reader" that families with children need not apply. Contrary to the Complainant's position that there is no other "reasonable interpretation" of these advertisements, the phrases also lend themselves to a non-discriminatory interpretation and may just as well indicate a suitability of the Premises to a potential renter, not the acceptability of the renter to the owner. See Metropolitan Milwaukee Fair Housing Council, 173 Wis. 2d at 205.
17. Therefore, because the advertisements are not facially discriminatory, there must be some extrinsic evidence in the file from which the Commission can "verify" that the Respondent intended to convey an unlawful preference for families without children. The Commission's review of the file shows that there is no such evidence. If no substantial evidence of discrimination exists after the Department's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D)(2008).
18. The Complainant admittedly did not engage in any testing, such as that described in Chicago Lawyers' Committee v. Craigslist, Inc., 519 F.3d at 666 (7th Cir. 2008), in order to gather evidence that the Respondent intended to engage in unlawful discrimination when it published the advertisements.

19. Further, the Department's investigation did not uncover any substantial evidence that the Respondent's advertisements were either founded upon, or directly or indirectly indicated, an intent to engage in unlawful discrimination. In fact, one of the Premises was eventually rented to a single man and his three children. The file also showed that the Respondent had a history of renting to families with children.
20. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of its charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Complainant's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Mark Allen Realty, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)	
)	
HUMAN RIGHTS COMMISSION)	Entered this 2 nd day of September 2009.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Rozanne Ronen